

Atty Docket No. PC27840A
Appl. No. 10/772527
Reply to Office action of January 24, 2007

REMARKS/ARGUMENTS

Objection under 35 U.S.C. 112

The specification is objected to because *Fusarium culmorum* UC 16069 has allegedly not been deposited under the terms of the Budapest Treaty.

Fusarium culmorum UC 16069 has been deposited at the American Type Culture Collection (ATCC as PTA-5697) under the strain designation LN 15897.

The strain designation used in the application, as filed, was UC16069. When deposited with ATCC, the strain designation was changed to LN15897. Applicant is attaching a statement and a copy of the ATCC deposit form showing the old and the new strain designation. Applicant is also enclosing a receipt form for the deposit. Reconsideration of and withdrawal of this objection in view of the deposit of the microorganism is respectfully requested.

Rejection under 35 U.S.C. 112

Claims 1-11 have been rejected under 35 U.S.C. 112 because *Fusarium culmorum* UC 16069 has allegedly not been deposited under the terms of the Budapest Treaty.

Fusarium culmorum UC 16069 has been deposited at the American Type Culture Collection (ATCC as PTA-5697) under the strain designation LN 15897.

The strain designation used in the application, as filed, was UC16069. When deposited with ATCC, the strain designation was changed to LN15897. Applicant is attaching a statement and a copy of the ATCC deposit form showing the old and the new strain designation. Applicant is also enclosing a receipt form for the deposit.

Reconsideration of and withdrawal of this rejection in view of the deposit of the microorganism is respectfully requested.

FORM AMEND
Rev. 5/27/03

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Rejection under 35 U.S.C. 112

Claims 1 and 4-11 are rejected under 35 U.S.C. 112 because allegedly the specification is not enabling for the entire genus of *fusarium*. To advance prosecution Applicant has limited the claims to *fusarium culmorum* ATCC PTA-5697.

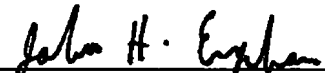
Rejection under 35 U.S.C. 112

Claim 3 is rejected as allegedly being indefinite because claim 3 ends in a semi colon. The claim has been amended to replace the semi colon with a period. Reconsideration and allowance of this claim in view of this amendment is respectfully requested.

Claims 5-8 are rejected to as being indefinite because allegedly the phrase "such as" renders the claim indefinite. The phrase "such as" has been deleted. Reconsideration and allowance of these claims in view of this amendment is respectfully requested.

Prompt and favorable consideration of this application is respectfully requested. If the Examiner believes that personal communications will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,



John H. Engelmann, Attorney
Registration No. 28075

Date: APRIL 20, 2007

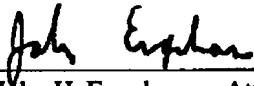
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STATEMENT OF DEPOSIT UNDER THE TERMS OF THE BUDAPEST TREATY

Fusarium colmorum UC 16069 (ATCC PTA-5697) has been deposited under the terms of the Budapest Treaty. The strain will be irrevocably and without restriction or condition released to the public upon the issuance of a patent.



John H. Engelmann, Attorney
Registration No. 28075

Date: APRIL 20, 2007

FORM AMEND
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